Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, January 20, 2023 4:42 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Rule 802.2 Question

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Friday, January 20, 2023 4:41:31 PM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Rule 802.2 Question

The pipeline payment counts toward the $5MM figure, but the insurance payment does not.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Friday, January 20, 2023 3:01 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Rule 802.2 Question

From: [redacted]
Sent: Friday, January 20, 2023 3:00:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Rule 802.2 Question

I would like to confirm the application of the unproductive real property exemption in 16 CFR 802.2(c) to a transaction our client is considering. Our client owns real estate that is timberland, separated into a number of parcels. We have determined which parcels potentially fall within the unproductive real property exemption, taking into account the PNO's guidance on physical separation of real property parcels as required by Rule 802.2(c)(iii). Our question concerns the $5 million in total revenues provision in Rule 802.2(c)(1).
The revenues from ordinary business operations (revenues from sales of timber and carbon offsets) for one physically separate parcel of timberland unproductive real property did not exceed $5 million during the 36 months preceding the acquisition the parties are considering. However, two extraordinary events within the 36 month period resulted in two additional payments being made to the owner with respect to the parcel.
1. Within the last 36 months, the owner received a payment of insurance proceeds from its insurer that reflected payment for hurricane damage to timber on the parcel.
2. Within the last 36 months, the owner received a payment from a third party for placement of a perpetual pipeline on the parcel. The owner remains title owner of the parcel, but it has perpetually relinquished operational control over the area of land on which the pipeline will run.
If neither the insurance proceeds payment or the payment for the placement of the pipeline are considered revenues generated by the real property parcel, then the revenues generated by that parcel do not exceed $5 million in the prior 36 months.
We understand that for purposes of 802.2(c), "total revenues" are net sales/net revenues (Informal Interpretation 1509005, September 30, 2015). The insurance payment did not result from the sale of any timber, but was a payment for damages to the value of the timber. Likewise, the payment for the perpetual pipeline did not result from the sale of timber, but from the granting of the perpetual easement that allows construction of the pipeline.

Would either of those payments count as “revenue” that would count toward the $5 million figure for purposes of Rule 802.2(c)?

Thank you for your assistance.

[redacted]

[redacted]

[redacted]